

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

---

THE PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

vs

Michigan Supreme Court  
No. 148347

RANDALL OVERTON,  
Defendant-Appellant.

---

Third Circuit Court No. 11-002103  
Court of Appeals No. 308999

---

**PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF  
ORAL ARGUMENT REQUESTED**

KYM L. WORTHY  
Prosecuting Attorney  
County of Wayne

TIMOTHY A. BAUGHMAN  
Chief of Research,  
Training, and Appeals

MADONNA GEORGES BLANCHARD  
Assistant Prosecuting Attorney  
11<sup>th</sup> Floor, 1441 St. Antoine  
Detroit, Michigan 48226  
Phone: (313) 224-5764

## Table of Contents

	Page
Index of Authorities .....	ii
Statement of Jurisdiction .....	1
Statement of Question Presented .....	1
Statement of Facts .....	4
Argument .....	7
I.    A defendant “engages” in sexual penetration with another person when he or she is involved in or takes part in the intrusion of any object into the genital or anal openings of another person’s body. Defendant directed the minor victim to insert her finger into her vagina and the victim complied. The victim’s finger is an “object” within the meaning of the statute, so that defendant engaged in the sexual Sufficient evidence exists to support defendant’s conviction of first-degree CSC. ....	7
Standard of Review .....	7
Discussion .....	7
Relief .....	15

## **Index of Authorities**

### **FEDERAL CASES**

Territory of Guam v Quidachay, 374 F3d 820 (2004) .....	11
------------------------------------------------------------	----

### **STATE CASES**

Connecticut v Grant, 33 Conn App 133; 634 A2D 1181 (1993) .....	9
North Carolina v Green, 746 S E 2d 457 (2013) .....	12
People v Grissom, 492 Mich 296; 821 NW2d 50 (2012) .....	9
People v Hack, 219 Mich App 299; 556 NW2d 187 (1996) .....	10
People v Keeney, 24 Cal App 4 <sup>th</sup> 886; 29 Cal Rptr 2d 451 (1994) .....	13, 14
People v Koonce, 466 Mich 515; 648 NW2d 153 (2002) .....	7, 8
State v Lucas, 302 NC 342; 275 SE2d 433 (1981) .....	12
People v Morey, 461 Mich 325; 603 NW2d 250 (1999) .....	8
People v Randall Scott Overton, unpublished opinion per curiam of the Court of Appeals, issued October 31, 2013 (Docket No. 308999) .....	6
People v Perkins, 473 Mich 626; 703 NW2d 448 (2005) .....	7
People v Sabin, 463 Mich 43; 614 NW 2d 888 (2000) .....	8

Simmons v Indiana, 746 NE2d 81 (2001) .....	9
People v Stewart, 472 Mich 624; 698 NW2d 340 (2005) .....	7
People v Williams, 475 Mich 245; 716 NW2d 208 (2006) .....	9
People v Zajackowski, 493 Mich 6; 825 NW2d 554 (2012) .....	8

### **OTHER AUTHORITIES**

MCL 750.145a .....	3
MCL 750.145c .....	3
MCL 750.338b .....	3
MCL 750.520a(r) .....	7, 8
MCL 750.520b .....	3
MCL 750.520b(1)(a) .....	8
MCL 750.520c .....	3
Cal. Pen. Code § 289(a) .....	13
9 Guam Code § 25.10(a)(9) .....	11
9 Guam Code § 25.15(a) .....	11
N.C. Gen.Stat. § 14–27.1(4) (2011) .....	12
N.C. Gen.Stat. § 14–27.4(a) (2011) .....	12
Black's Law Dictionary (9th ed) .....	9, 12
Merriam-Webster's Collegiate Dictionary, Eleventh Edition .....	10, 12

### **Statement of Jurisdiction**

The People agree that this Court has jurisdiction.

## Statement of Question Presented

### I.

**A defendant “engages” in sexual penetration with another person when he or she is involved in or takes part in the intrusion of any object into the genital or anal openings of another person’s body. Defendant directed the minor victim to insert her finger into her vagina and the victim complied. Was there sufficient evidence to support defendant’s conviction of first-degree CSC?**

The trial court answered:	“Yes.”
The court of appeals answered:	“Yes.”
The People answer:	“Yes.”
Defendant answers:	“No.”

## Statement of Facts

After a jury trial, defendant Randall Scott Overton was found guilty<sup>1</sup> of first-degree criminal sexual conduct (CSC),<sup>2</sup> second-degree CSC,<sup>3</sup> and three counts of gross indecency.<sup>4</sup> The jury found defendant not guilty of count four, child sexually abusive activity<sup>5</sup> and count five, accosting a minor for immoral purposes.<sup>6</sup> The trial court sentenced defendant to the mandatory minimum of 25 years for first-degree CSC, 29 months to 15 years for second-degree CSC, and 17 months to 5 years on the three counts of gross indecency, to be served concurrently to defendant's sentence of first-degree CSC.<sup>7</sup>

When the victim was ■ years old defendant would require her to show him her vaginal area, place her finger into her vagina, allow him to shave and rub ointment on her private area. Defendant performed "virginity checks" on the minor victim, but only when she exited the shower and when he was the sole adult present.<sup>8</sup> During these "virginity checks" defendant required the victim to lie

---

<sup>1</sup> Transcripts are cited throughout this Supplemental Brief in the following form: month/day of proceedings, page numbers. 6/7, 5-6.

<sup>2</sup> MCL 750.520b.

<sup>3</sup> MCL 750.520c.

<sup>4</sup> MCL 750.338b.

<sup>5</sup> MCL 750.145c.

<sup>6</sup> MCL 750.145a.

<sup>7</sup> 6/21, 23.

<sup>8</sup> 6/2, 49-51.

on defendant's bed, with nothing on but a towel, spread her legs, and spread her vagina with her fingers, while defendant looked at the victim's vagina from 18 to 24 inches away.<sup>9</sup>

In another incident, defendant directed the minor victim to lie on his bed, with no clothing from the waist down, and insert her finger into her vagina, ostensibly to show her where a tampon goes, while defendant held a mirror in front of her.<sup>10</sup>

In yet another incident, defendant touched the victim's pubic area. When the victim was shaving her private area with an electric shaver, defendant informed her that she had missed several spots and instructed her to lie on a towel that defendant had laid out on his bed and open her legs, with no clothing on the bottom part of her body.<sup>11</sup> Defendant proceeded to shave the "bottom part," described as the "pubic area," with the electric shaver.<sup>12</sup> The victim did not want that area shaved.<sup>13</sup> The victim then developed bumps on her private area and defendant told the victim that she "had to put ointment on it."<sup>14</sup> The victim put ointment on the area and although she did not need help, defendant also rubbed ointment on the minor victim's private area.<sup>15</sup>

---

<sup>9</sup> 6/2, 53.

<sup>10</sup> 6/2, 65-66.

<sup>11</sup> 6/2, 56-57.

<sup>12</sup> 6/2, 58.

<sup>13</sup> *Id.*

<sup>14</sup> 6/2, 58-59.

<sup>15</sup> 6/2, 59.



Amanda Doss, a case worker from Child Protective Services testified that she met with the victim at school and, after their discussion, arranged a Kid's Talk interview.<sup>16</sup> Doss told codefendant [REDACTED] (the victim's mother) that [REDACTED] was not to drive the victim to the interview.<sup>17</sup> Despite Doss's instruction, codefendant drove the victim to the Kid's Talk interview. Doss and her supervisors expressed to codefendant that she was not supposed to drive the victim to the interview; codefendant then arranged for defendant's father to pick up the victim.<sup>18</sup> Doss testified that "[a]fter the disclosure [the victim] made at Kid's Talk, in speaking with her, she was very afraid to go home. She was very afraid that there would be repercussions for her telling the truth. She felt unsafe."<sup>19</sup> Doss placed the victim in a shelter and her brother in foster care.<sup>20</sup> The victim was later permanently placed with her biological father.<sup>21</sup> After the Kid's Talk interview Doss had a telephone conversation with defendant, in which he admitted to the following: he had the victim put her finger into her vagina at his direction; he shaved her pubic hair; he checked her vaginal area multiple times; and he checked her underwear to see if they fit.<sup>22</sup>

---

<sup>16</sup> 6/1, Vol. II, 15-17.

<sup>17</sup> 6/1, Vol. II, 19.

<sup>18</sup> 6/1, Vol. II, 19-20.

<sup>19</sup> *Id.*

<sup>20</sup> 6/1, Vol. II, 21-22.

<sup>21</sup> 6/2, 37.

<sup>22</sup> 6/1, Vol. II, 26-27.

On October 31, 2013, the Court of Appeals in an unpublished per curiam opinion affirmed defendant's convictions and sentence.<sup>23</sup> Specifically, as it relates to this supplemental brief, the Court of Appeals held that there was sufficient evidence to find defendant guilty of first-degree criminal sexual conduct. *Overton* held that according to the plain language of the statute the victim's penetration of her vagina with her finger, as instructed by defendant, constituted sexual penetration.<sup>24</sup>

---

<sup>23</sup> *People v Randall Scott Overton*, unpublished opinion per curiam of the Court of Appeals, issued October 31, 2013 (Docket No. 308999). Attached as Appendix A.

<sup>24</sup> *People v Randall Scott Overton*, unpublished opinion per curiam of the Court of Appeals, issued October 31, 2013 (Docket No. 308999), slip op 4. Attached as Appendix A.

## Argument

### I.

**A defendant “engages” in sexual penetration with another person when he or she is involved in or takes part in the intrusion of any object into the genital or anal openings of another person’s body. Defendant directed the minor victim to insert her finger into her vagina and the victim complied. Sufficient evidence exists to support defendant’s conviction of first-degree CSC.**

### Standard of Review

This case involves the interpretation of MCL 750.520b, first-degree criminal sexual conduct (CSC). This Court reviews issues of statutory interpretation de novo.<sup>25</sup>

### Discussion

According to the plain language of the statute, and in line with other jurisdictions, when defendant instructed the victim to insert her finger into her vagina, he engaged in the sexual penetration of the victim, which is the “intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body.”<sup>26</sup>

When interpreting a statute, this Court’s goal is to give effect to the intent of the Legislature by reviewing the plain language of the statute.<sup>27</sup> “If the language is clear, no further construction is

---

<sup>25</sup> *People v Stewart*, 472 Mich 624, 631; 698 NW2d 340 (2005).

<sup>26</sup> MCL 750.520a(r).

<sup>27</sup> *People v Perkins*, 473 Mich 626, 630; 703 NW2d 448 (2005), citing *People v Koonce*, 466 Mich 515, 518; 648 NW2d 153 (2002).

necessary or allowed to expand what the legislature clearly intended to cover.”<sup>28</sup> This Court may consult dictionary definition of terms that are not defined in a statute.<sup>29</sup>

The first-degree CSC statute states the following, in relevant part:

A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.<sup>30</sup>

A person is guilty of CSC in the first degree if (1) he or she engages in sexual penetration (2) with another person and (3) that other person is under 13 years of age.<sup>31</sup> First-degree CSC is a general intent crime, thus, no intent is required other than that evidenced by the doing of the act(s) constituting the offense.<sup>32</sup>

The CSC statute defines sexual penetration as “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body, or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.”<sup>33</sup> Thus, one directly “engages” in “sexual penetration” with “another person,” laying aside the specifically delineated sexual acts of “sexual intercourse, cunnilingus, fellatio, [and] anal intercourse,” in one of two ways:

---

<sup>28</sup> *Koonce, supra* at 518, citing *People v Morey*, 461 Mich 325, 329-330; 603 NW2d 250 (1999).

<sup>29</sup> *People v Zajackowski*, 493 Mich 6, 13; 825 NW2d 554 (2012).

<sup>30</sup> MCL 750.520b(1)(a).

<sup>31</sup> MCL 750.520b(1)(a).

<sup>32</sup> *People v Sabin*, 463 Mich 43, 69; 614 NW 2d 888 (2000) (citation omitted).

<sup>33</sup> MCL 750.520a(r).

- any other intrusion, however slight, of any part of a person's body into the genital or anal openings of *another person's* body; or
- any other intrusion, however slight, of *any object* into the genital or anal openings of *another person's* body.

Here, no part of a person's body intruded into the genital or anal openings of *another person's* body; the question, then, is whether the victim's digital self-penetration, directed by the defendant, is penetration by the victim by "any object." It is.

An "object" as included in the definition of sexual penetration includes a finger.<sup>34</sup> Courts in other jurisdictions have so held. In *Simmons v Indiana*, the Court held the defendant's finger was considered an "object."<sup>35</sup> Similarly, in *Connecticut v Grant*, the Court held that the penetration of the child's vagina by the defendant's finger constituted sexual intercourse.<sup>36</sup> Therefore, the intrusion of a finger into any part of a person's body constitutes sexual penetration.

When a defendant instructs a victim to insert an object into any part of the victim's body, the defendant has engaged in sexual penetration. The CSC statute does not define the word "engage." "Engage" is defined as: "to employ or involve oneself; to take part in; to embark on,"<sup>37</sup> or "to do or

---

<sup>34</sup> *People v Grissom*, 492 Mich 296, 331; 821 NW2d 50 (2012), in dictum, characterized the defendant's finger as a object. *People v Williams*, 475 Mich 245, 251 n 1; 716 NW2d 208 (2006) (dictum is a "judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential.").

<sup>35</sup> *Simmons v Indiana*, 746 NE2d 81, 86 (2001).

<sup>36</sup> *Connecticut v Grant*, 33 Conn App 133, 141; 634 A2D 1181 (1993).

<sup>37</sup> Black's Law Dictionary (9th ed).

take part in something.”<sup>38</sup> Accordingly, one only needs to involve one’s self or *take part* in the sexual penetration of another person to satisfy the first element of the statute.

The Michigan Court of Appeals in *People v Hack*, held that the defendant acted as the principal in committing first-degree CSC when he caused the three-year-old girl to perform fellatio on the one-year-old boy.<sup>39</sup> The defendant argued that he could only be considered as an aider and abettor to the two children, because they were the only ones engaged in sexual activity. But *Hack* held that “a person is guilty of first-degree criminal sexual conduct if the person engages in sexual penetration with another person and the victim is under the age of thirteen.”<sup>40</sup> *Hack* then reasoned that the defendant committed first-degree CSC “by *causing* the three-year-old girl to perform fellatio on the one-year-old boy.”<sup>41</sup> *Hack* concluded that “[w]here a defendant uses another person to accomplish a crime on his behalf, he is guilty as a principal.”<sup>42</sup>

The analysis is the same here. According to the plain language of the statute, defendant engaged in sexual penetration with the victim. Defendant involved himself and took part in the sexual penetration of the minor victim, another person, when he directed her to penetrate her vagina with an object: her finger.<sup>43</sup> Defendant acted as a principal under his own direction in committing

---

<sup>38</sup> Merriam-Webster’s Collegiate Dictionary, Eleventh Edition.

<sup>39</sup> *People v Hack*, 219 Mich App 299, 303; 556 NW2d 187 (1996), lv den.

<sup>40</sup> *Hack*, *supra* at 303.

<sup>41</sup> *Hack*, *supra* at 303 (emphasis supplied).

<sup>42</sup> *Hack*, *supra* at 303.

<sup>43</sup> 6/2, 65-66.

first-degree CSC. Therefore, according to the plain language of the statute, defendant's instruction to the victim to insert her finger into her vagina constituted first-degree CSC.

Other jurisdictions have held that a defendant's instruction to another to insert their own finger or object in their vagina is the engagement of sexual penetration. The U.S. Court of Appeals for the Ninth Circuit held that by the defendant's instruction to the victim to remove her clothing and insert her finger in her vagina meant the defendant engaged in sexual penetration of the victim.<sup>44</sup>

The statute at issue provided the following, in relevant part:

(a) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with the victim and if any of the following circumstances exists:

....

(3) sexual penetration occurs under circumstances involving the commission of any other felony;

....

(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.<sup>45</sup>

The Guam Code defined sexual penetration, in the same manner as the Michigan definition, as the following:

Sexual Penetration means sexual intercourse, cunnilingus, fellatio, anal intercourse or any other intrusion, however slight, of any part of a person's body *or of any object* into the genital or anal openings of another person's body, but emission of semen is not required....<sup>46</sup>

Similarly, in *North Carolina v Green* the defendant claimed that the first-degree sex offense charge should have been dismissed because he did not engage in a sexual act with the

---

<sup>44</sup> *Territory of Guam v Quidachay*, 374 F3d 820, 821-822 (2004).

<sup>45</sup> 9 Guam Code § 25.15(a).

<sup>46</sup> 9 Guam Code § 25.10(a)(9) (emphasis supplied).

victim because he did not come into contact with her.<sup>47</sup> The Court disagreed. The governing statute at issue stated the following, in relevant part:

A person is guilty of a sexual offense in the first-degree if the person engages in a sexual act ... [w]ith another person by force and against the will of the other person....<sup>48</sup>

In North Carolina, a sexual act is defined as “the penetration, however slight, *by any object* into the genital or anal opening of another person's body.”<sup>49</sup> *Green* reasoned that because “[t]he North Carolina Supreme Court has held that ‘sexual act’ encompasses ‘every penetration other than vaginal intercourse’ and thus, the term ‘any object’ embraces ‘parts of the human body as well as inanimate or foreign objects.’”<sup>50</sup> *Green* also looked at the plain language of the statute and determined that it required that the defendant “engages in a sexual act ... [w]ith another person.”<sup>51</sup> *Green* defined “engage” as “[t]o employ or involve oneself; to take part in; to embark on,”<sup>52</sup> and defined “with” as “a function word [used] to indicate a participant in an action, transaction, or arrangement.”<sup>53</sup> Based on the statutory text, *Green* held that the defendant was properly charged with first-degree CSC because he instructed the victim to insert her own finger into her vagina.

---

<sup>47</sup> *North Carolina v Green*, 746 S E 2d 457, 462 (2013).

<sup>48</sup> N.C. Gen.Stat. § 14-27.4(a) (2011).

<sup>49</sup> N.C. Gen.Stat. § 14-27.1(4) (2011) (emphasis supplied).

<sup>50</sup> *Green, supra* at 463, citing *State v Lucas*, 302 NC 342, 346, 275 SE2d 433 (1981) (holding that the defendant's alleged insertion of his fingers into the victim's vagina constituted a sexual act because the defendant's fingers were within the definition of “any object”).

<sup>51</sup> *Green, supra* at 463, quoting N.C. Gen.Stat. § 14-27.4(a) (2011).

<sup>52</sup> *Green, supra* at 463, quoting Black’s Law Dictionary 608 (9th ed.2009).

<sup>53</sup> *Green, supra* at 463, quoting Merriam–Webster's Collegiate Dictionary 1438 (11th ed.2007).



In *People v Keeney*, the California Court of Appeals also dealt with the issue of self penetration. *Keeney* held that the victim's own penetration with her finger at the defendant's direction was sufficient to establish penetration.<sup>54</sup> The statute at issue in *Keeney* stated the following:

Every person who causes the penetration, however, slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal ... by any foreign object ... when the act is accomplished against the victim's will ... shall be punished by imprisonment in the state prison.<sup>55</sup>

In *Keeney*, the defendant spread a blanket on the ground and directed the victim to lie down on the blanket and insert two fingers of one hand in her vagina, and a finger from her other hand in her anus.<sup>56</sup> The defendant argued that because the victim inserted her own finger into her vagina, penetration by a foreign object was not established.<sup>57</sup> *Keeney* held that the statute penalized the act of a defendant who caused "the finger of anyone-whether the victim, defendant or a third party-to penetrate the victim."<sup>58</sup>

---

<sup>54</sup> *People v Keeney*, 24 Cal App 4<sup>th</sup> 886; 29 Cal Rptr 2d 451 (1994).

<sup>55</sup> *Keeney*, *supra* at 888, quoting Cal. Pen. Code § 289(a).

<sup>56</sup> *Keeney*, *supra* at 888.

<sup>57</sup> In *Keeney*, the defendant also argued that the acts would not go unpunished because they are proscribed by the state's sexual battery statute. *Keeney*, *supra* at 889. *Keeney* rejected the defendant's argument. Regardless, Michigan does not have a sexual battery statute, and if not punished by first-degree CSC statute, such conduct would go unpunished.

<sup>58</sup> *Keeney*, *supra* at 889.

*Quidachay, Green, and Keeney*<sup>59</sup> looked to the plain language of the particular statute and determined that “engaging” in sexual penetration includes the instruction by a defendant to a victim to insert her own finger, or any object, in her vagina. So here. When looking at the statutory text of the first-degree CSC statute, “engaging” in sexual penetration includes conduct that the defendant takes part in or involves oneself in. In this case, defendant engaged in a sexual penetration of the victim when he instructed the victim, naked, to lie on a towel on his bed, spread her legs, and insert her own finger into her vagina, while she watched herself in a mirror.<sup>60</sup>

---

<sup>59</sup> One notable difference in the statutes compared to the Michigan statute is in *Keeney*, which uses the word “cause” instead of “engage.”

<sup>60</sup> If defendant’s conduct is not prohibited under the first-degree CSC statute, then perpetrators in Michigan would be given a loophole to avoid consequence. A perpetrator would only need to instruct the victim to perform the acts, that if they performed themselves would be prohibited, including penetrations with objects other than a finger.

**Relief**

**THEREFORE**, the People respectfully request that this Court either deny leave to appeal or affirm the Court of Appeals decision.

Respectfully submitted,

KYM L. WORTHY  
Prosecuting Attorney  
County of Wayne

TIMOTHY A. BAUGHMAN  
Chief of Research, Training, and Appeals

---

**MADONNA GEORGES BLANCHARD (P74068)**  
Assistant Prosecuting Attorney  
11<sup>th</sup> Floor, 1441 St. Antoine  
Detroit, Michigan 48226  
313-224-5764

Date: June 30, 2014